

THE HIGH COURT OF UTTARANCHAL AT NAINIAL

**Writ Petition (M/S) No. 3851 of 2001.
(Old No. 41928/2000)**

Sri Mahendra Singh,
33, Nai Basti Clement Town, Dehradun.

.....**Petitioner.**

Vs.

1. The Rent Control and Eviction Officer/District Supply Officer, Dehradun.
2. Sri Ashok Kumar, son of Sri Dwarika Parisad,
Resident of Society Area, Clement Town, Dehradun.
3. Sri Sriyansh Kumar son of Sri Chaman Lal Jain,
Resident of Society Area, Clement Town Dehradun.
4. Smt. Ram Murti wife of late Sri Amar Singh,
Resident of 33, Nai Basti, Clemet Town, Dehradun.

.....**Respondent.**

Sri Rajendra Dobhal, learned counsel for the applicant.
Learned Standing Counsel for the respondent no.1.
None present for the respondent nos. 2 and 3 despite service.
Ms. Geeta Parihar, Adv., learned counsel for the respondent No. 4.

Dated July 21, 2006

P.C.: Hon'ble B.S. Verma, J.

Heard Sri Rajendra Dobhal, learned counsel for the petitioner as well as Ms. Geeta Parihar, Advocate, learned counsel for the respondent no.4 and leaned Standing Counsel for the State. None appeared for the respondent nos. 2 and 3. I have perused the entire material on record.

By means of this writ petition, the petitioner has sought for issuing a writ, order or direction in the nature of certiorari quashing the order dated 31.05.2000 passed by the Rent Control and Eviction Officer Dehradun (**for shot RC & EO**) in Rent control Case No. 113 of 1993, where the application for allotment moved by the petitioner Mahendra Singh was disposed of with the observation that there was dispute regarding the ownership/title of the shop in question between respondent nos. 3. and 4. The impugned order is annexed as Annexure No. 8 to the writ petition.

At the outset, it may be noted that notices were issued to respondent no.3 and respondent no.4, as they claimed themselves to be the landlord and owner of the disputed shop. The learned R.C. & E.O. directed the Rent Control Inspector to enquire and submit his report who, in turn, submitted his report on 22.6.1999. In the report, it was mentioned that one Ashok Kumar was found in occupation of the shop and Smt. Rammurti was allegedly the landlady. Respondent No. 3 claimed himself to be the landlord. It appears that the learned R.C. & E.O. focused his attention regarding the ownership of the disputed and lost sight regarding disposal of allotment application in accordance with law as is evident from a perusal of the impugned order.

Learned counsel for the petitioner has submitted that the R.C. & E.O. has not finally decided the application for allotment moved by the petitioner and there is no procedure under the U.P. Act No. XIII of 1972 to keep the same pending till the decision of title between respondent no.3 and 4 with regard to the disputed shop.

Learned counsel for the petitioner further submitted that the petitioner Mahendra Singh is the prospective allottee of the dispute. If the vacancy exists, then there is no question as to who is the owner of the property in dispute.

In the facts and circumstances of the case, I am of the view that the R.C. & E.O. was required to consider whether any vacancy of the accommodation existed or not as well as whether the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 were application to the case or not.

In view of the said fact, the order passed by R.C. & E.O. is liable to be set aside and the matter deserves to be remanded.

Accordingly, the writ petition is allowed. The impugned judgment and order dated 31-5-2000 is set aside. The case is remanded to the learned R.C. & E.O. with the direction to proceed further in the matter and to ascertain the vacancy as per provisions of the aforesaid Act and the Rules framed there-under and then to decide the application for allotment moved by the petitioner after affording opportunity of hearing to all the parties to the proceedings and in accordance with law. No order as to costs.

(B.S. Verma, J.)

RCP